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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CARL A. CAPOZZOLA et al., Plaintiffs and Appellants, v. MICHAEL HOGUE et al., Defendants and Respondents.	B289796 (Los Angeles County Super. Ct. No. YC071405)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ramona G. See, Judge. Affirmed.

McGuinness & Associates, Joseph G. McGuiness and Jeffrey S. Flashman, for Plaintiffs and Appellants.

Rovens Lamb and Steven A. Lamb, for Defendants and Respondents.

In 2011, plaintiffs Carl Capozzola and Chris Carbonel agreed to help finance an annual event where participants run across the Vincent Thomas Bridge spanning the Los Angeles Harbor. The race, called Conquer the Bridge, was created and managed by defendant Michael Hogue. The negotiations between plaintiffs and Hogue over the financing terms and related remuneration led to a memorandum of understanding (MOU). That MOU stated, among other things, that in return for the money they were giving Hogue, plaintiffs would receive a 15 percent interest in the race as well as a percentage of race revenues. The MOU stated the parties agreed to enter into a future written contract including the MOU terms, as well as additional terms not yet agreed upon. That future written agreement was never prepared. Capozzola and Carbonel nevertheless gave Hogue $20,000, and were compensated with a percentage of revenues from the 2011—2015 races.

By the first half of 2016, the parties' relationship had broken down and Hogue terminated plaintiffs' participation in the race. Capozzola and Carbonel sued Hogue for breach of contract and other relief. Following a bench trial, the court found the MOU was an unenforceable agreement to agree, but the parties did have an oral agreement that Hogue breached. The court awarded $47,776 for amounts earned by plaintiffs through the 2016 race but not paid by Hogue, and found plaintiffs failed to meet their burden of proof as to any other claimed damages or causes of action.

Plaintiffs appeal, arguing the trial court erred in not finding the MOU binding and awarding them relief based on its terms. Plaintiffs also assert the damage award was inadequate, and alternatively the court erred in not finding Hogue was liable for converting their interest in the race.

Appellate courts are not a second trier of fact—we do not reweigh evidence or reassess the credibility of witnesses. As plaintiffs largely reargue the evidence presented below and identify no legal error, we affirm.

FACTUAL BACKGROUND

In its written decision following trial, the court found that all parties "lacked veracity and suffered from the same selective memory problems," and therefore the most compelling proof was written documents and the conduct of the parties contemporaneous with the events at issue. In light of our deference to the trial court's resolution of evidentiary conflicts and assessment of witness credibility, we similarly focus on the contemporaneous written documents and conduct of the parties in reciting the facts.

A. Contractual Negotiations Between the Parties

Hogue started Conquer the Bridge in 2009. The event takes place on Labor Day. To stage the race, Hogue needed a short-term loan of approximately $20,000 prior to each event. Hogue borrowed this amount from a friend in 2009 and again in 2010 and repaid the loans shortly after the 2009 and 2010 races, respectively.

In 2011, the parties discussed Capozzola and Carbonel investing in the race. Hogue sent an e-mail in March 2011 indicating his understanding of those discussions. Capozzola and Carbonel would pay Hogue $20,000. A limited liability company (LLC) would be created to operate the race, to be owned 85 percent by Hogue and 15 percent by Capozzola and Carbonel. In return, Capozzola and Carbonel would receive 15 percent of the gross dollars generated by the race, and 25 percent of any sponsorship money secured by Capozzola and Carbonel.

The parties thereafter prepared the MOU "to outline the general terms and conditions for cooperation among the parties . . . ." The MOU was signed by the parties in April 2011. The MOU stated the parties had "agreed to enter into an agreement to be drafted and executed thereafter," and that the future agreement would contain at least the terms and obligations set forth in the MOU. The MOU provided Capozzola and Carbonel would pay $20,800 to Hogue ($20,000 plus $800 to defray costs related to the creation of the LLC that would operate the race), and receive in return a 15 percent membership interest in the LLC. Capozzola and Carbonel were to receive 15 percent of gross revenues from the race minus 60 percent of any sponsorship revenue they procured. Capozzola and Carbonel were to use their best efforts to assist in securing sponsors for the event.

Although the parties agreed in the MOU to enter into an agreement to be drafted and executed thereafter, no such final agreement document was ever prepared. On May 24, 2011, Hogue e-mailed Capozzola to ask when Hogue would receive final payment of the plaintiffs' investment. Capozzola replied the final payment would be made when Hogue and Carbonel signed the "final agreement." When asked at trial to explain what he meant by the "final agreement," Capozzola responded, "I don't know."

In June 2011, Hogue acknowledged receipt of $20,000 from Capozzola and Carbonel as payment in full. Prior to Hogue receiving the money, Capozzola drafted a memo for Hogue to sign. The memo stated that in return for the $20,000, Hogue agreed to pay 15 percent of the gross revenues from any source of income, and 40 percent of any funds contributed by sponsors provided by Capozzola and Carbonel (instead of the revenue/sponsorship share formula set forth in the MOU or in the parties' pre-MOU discussions). The memo to file prepared by Capozzola and signed by Hogue did not contain a number of terms in the MOU, including plaintiffs' 15 percent ownership share.

B. The Parties' Performance

Although the parties did not sign a contract as contemplated by the MOU, they acted in conformance with some of the MOU's terms. Capozzola and Carbonel gave Hogue $20,000. Capozzola and Carbonel formed an entity called CC Racing LLC to hold their interest in the race. Hogue formed Conquer the Bridge LLC to operate the race. Capozzola and Hogue were paid 15 percent of the gross receipts from the race beginning in 2011.

In other ways, the parties did not treat the MOU as governing. Capozzola refused to pay money to Hogue based on the MOU and wanted a further agreement in place first. When Hogue asked for the remaining $800 of the $20,800 amount forth in the MOU, Capozzola said he had no idea what Hogue was talking about and suggested Hogue deduct LLC costs from amounts already paid. Tax returns for 2013 and 2014 indicated that CC Racing LLC owned 50 percent of Conquer the Bridge LLC, not 15 percent. Plaintiffs were paid (and accepted) 40 percent of sponsorship revenues they generated, rather than the MOU formula of 15 percent of gross revenues minus a percentage of sponsorship revenues plaintiffs generated.[1] Despite obligations under the MOU with regard to obtaining sponsors, Carbonel never obtained a sponsor. Capozzola obtained no sponsors after 2013, and there was evidence (which Capozzola disputed) that Capozzola made no efforts to do so after 2014.[2]

In 2016, Hogue concluded Capozzola and Carbonel were not generating sufficient sponsorship revenues and declined to pay them anything following the 2016 race, or any race thereafter.

PROCEDURAL BACKGROUND

Following Hogue's termination of their participation in the race, Capozzola, Carbonel, and CC Racing LLC filed suit against Hogue and Conquer the Bridge LLC, alleging breach of contract,

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[1] Appellants' counsel contended at argument that 15 percent of gross revenues minus 60 percent of sponsorship revenues (as set forth in the MOU) was the same as 15 percent of gross revenues plus 40 percent of sponsorship revenues, and that trial evidence established this equivalence. We reject both contentions. To illustrate with a hypothetical, assume the race generated $1000 in gross revenues, $200 of which came from sponsors procured by Capozzola and Carbonel. The 15 percent minus 60 percent formula would mean Capozzola and Carbonel were owed $30, whereas the 15 percent plus 40 percent formula would mean they were owed $230. Given this math, the testimony at trial was not that these two formulas were equivalent. Instead, Hogue testified the MOU formula was not the payment calculation agreed upon.

[2] The trial court found plaintiffs' efforts at finding sponsorship, or lack thereof, did not breach the parties' oral agreement.

conversion, declaratory relief, and other claims. The matter ultimately proceeded to a four-day bench trial.

Plaintiffs argued the MOU was a binding contract, and alternatively the parties had an oral agreement. Plaintiffs also sought declaratory relief to enforce their purported rights under the MOU. Plaintiffs sought breach of contract damages for lost race revenues (15 percent of gross revenues, and 40 percent of any sponsorship revenues they secured) as well as the value of their 15 percent interest in the race. Alternatively, plaintiffs claimed Hogue converted plaintiffs' 15 percent interest in the race by failing to compensate them for it after Hogue's termination of the parties' agreement.

Hogue admitted the parties had an agreement regarding the race, but argued it was not the MOU. Hogue argued plaintiffs failed to substantially perform their obligations under the parties' agreement, thereby excusing Hogue and Conquer the Bridge LLC from further performance. Hogue also disputed plaintiffs' damages claims.

Following a deposition of the race's accountant, the parties stipulated to certain accounting records. The stipulation included the following categories of figures for the 2011-2017 races: gross revenue, 15 percent of gross revenue and 40 percent of sponsorship revenue generated by plaintiffs, the amount actually paid to plaintiffs, and the difference between the amount plaintiffs claimed they earned (15 percent of gross revenue and 40 percent of sponsorship revenue they generated) less what was in fact paid. For the period 2011—2016, the amount allegedly owed to plaintiffs was $47,766. For 2017, the amount was $22,780.

Plaintiffs requested $70,546 in contractual damages (the stipulated amounts for 2011—2017), and payment for their interest in the race which they valued at $262,284 based on testimony from Carbonel estimating its alleged value. Defendants argued plaintiffs had not established damages and were not entitled to a refund of the initial $20,000 given to Hogue.

While the parties do not direct us to any request for a statement of decision pursuant to Code of Civil Procedure section 632, they followed an analogous procedure. After the close of evidence, the parties filed a list of controverted issues for the trial court to decide. The court issued a written decision on December 29, 2017 addressing those issues. As pertinent to this appeal, the court found the MOU was "an agreement to agree to a future contract that was never drafted nor signed," and therefore was "not an agreement binding on the parties." The court found the conduct of the parties demonstrated they had an oral contract which included some, but not all, of the MOU's terms. MOU terms that were not part of the verbal agreement included the requirement that any termination of the agreement be mutual and in writing, and a right of first refusal if Hogue sold any additional interests in the race. The court found instead defendants had a right to terminate the oral agreement, but that notice of termination was not timely with regard to revenues for the 2016 race and therefore "did not terminate [defendants'] obligations to pay to [plaintiffs] their fifteen percent share in the Race proceeds in that year."[3]

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[3] As plaintiffs did not generate any sponsorships for the 2016 race, there was no sponsorship revenue share owed to them.

Finding defendants breached the verbal agreement by failing to pay plaintiffs their 15 percent share of the 2016 race proceeds, the court awarded $47,776 in damages for that breach based on amounts earned but not paid to plaintiffs for 2016, as well as amounts still owed for prior years.[4] The court did not award damages for plaintiffs' 15 percent interest in the race because there was "no competent admissible evidence demonstrating the value of the race"—either currently or in the future—on which to base such an award. In particular, the court rejected Carbonel's testimony regarding the value of plaintiffs' 15 percent interest as "unsupported and not credible," in particular because Carbonel "has not demonstrated the background, training and experience necessary to opine to the value of Defendants' interest in or the total value of the LLC and Race."

With regard to the conversion claim, the court found in favor of defendants for two reasons. First, the court noted plaintiffs claimed the defendants wrongfully withheld payment of plaintiffs' 15 percent interest, and withheld money is not a basis for a claim of conversion. Second, even assuming defendants had converted plaintiffs' 15 percent interest, the court found (as it had with regard to the breach of contract claim) that plaintiffs had failed to carry their burden of proof to demonstrate the value of their 15 percent interest.

With regard to declaratory relief, the court noted that the contractual provisions as to which plaintiffs sought declaratory

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[4] It is unclear why the trial court awarded $47,776 instead of the $47,766 set forth in the parties' stipulation. Acknowledging any error is insubstantial, neither party raises an issue regarding the $10 difference.

relief were in the MOU, which the court determined was not an enforceable agreement. The court accordingly declined to enter any declaratory relief.

Neither party objected to any portion of the trial court's written decision. Following entry of judgment, plaintiffs timely appealed.

DISCUSSION

A. Standard of Review

Because the parties followed a procedure analogous to the one applicable to a statement of decision, we look to cases involving statements of decision for the standard of review. "In reviewing a judgment based upon a statement of decision following a bench trial, we review questions of law de novo. [Citation.] We apply a substantial evidence standard of review to the trial court's findings of fact. [Citation.] Under this deferential standard of review, findings of fact are liberally construed to support the judgment and we consider the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences in support of the findings." (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981.) As no objections to the trial court's written decision were made, pursuant to Code of Civil Procedure section 634 or otherwise, the doctrine of implied findings applies. (*Id*. at p. 983.) Under this rule, we must infer the trial court impliedly made every factual finding necessary to support its decision. (*Id*. at p. 981.)

" 'The interpretation of a contract is subject to de novo review where the interpretation does not turn on the credibility of extrinsic evidence.' " (*Brisbane Lodging, L.P. v. Webcor Builders, Inc*. (2013) 216 Cal.App.4th 1249, 1256.) Whether contract terms are sufficiently definite to be enforceable is also a question of law to which we apply a de novo standard of review. (*Ladas v. California State Auto. Assn*. (1993) 19 Cal.App.4th 761, 770, fn. 2.) But "[w]here the existence of a contract is at issue and the evidence is conflicting or admits of more than one inference, it is for the trier of fact to determine whether the contract actually existed." (*Bustamante v. Intuit, Inc.* (2006) 141 Cal.App.4th 199, 208 (*Bustamante*).)

B. The Trial Court's Finding that the MOU Was Not a Binding Agreement Is Supported by Substantial Evidence

Capozzola and Carbonel first argue the trial court erred in finding the MOU was an unenforceable agreement to agree, rather than a binding contract. The cases to which the parties direct us summarize the applicable law. " 'Preliminary negotiations or an agreement for future negotiations are not the functional equivalent of a valid, subsisting agreement.' " (*Careau & Co. v. Security Pacific Business Credit, Inc*. (1990) 222 Cal.App.3d 1371, 1389.) "Where all of the essential terms of an agreement are definitely agreed upon in the writing there is a binding contract even though there is an intention that a formal writing will be executed later. [Citations.] . . . Where any of the terms are left for future determination or there is a manifest intention that the formal agreement is not to be complete until reduced to a formal writing to be executed, there is no binding contract until this is done." (*Smissaert v. Chiodo* (1958) 163 Cal.App.2d 827, 830—831; see also *Ersa Grae Corp. v. Fluor Corp*. (1991) 1 Cal.App.4th 613, 623.) No binding contract exists where material terms are left for future determination because " '[i]f there is no evidence establishing a manifestation of assent to the "same thing" by both parties, then there is no mutual consent to contract and no contract formation.' " (*Holmes v. Lerner* (1999) 74 Cal.App.4th 442, 457; see also *Bustamante*, *supra*, 141 Cal.App.4th at p. 215 [failure to reach meeting of the minds on all material points prevents formation of contract even though parties have agreed to some terms].)

Plaintiffs point to the MOU's statement that the future agreement between the parties would include at a minimum the terms and obligations set forth in the MOU, as well as the parties' actions following the MOU's execution, to argue the parties reached an enforceable agreement on the essential contract terms. While this is a plausible inference from the evidence at trial, our review begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, to support the findings below. (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660.) "A review for substantial evidence tests only whether there is substantial evidence to support the decision, not whether other facts in the record contradict that evidence." (*JMS Air Conditioning & Appliance Service, Inc. v. Santa Monica Community College Dist.* (2018) 30 Cal.App.5th 945, 967.)

The MOU indicates the parties reached agreement on some terms, but not others—including a lack of agreement on material terms contested in this matter such as the conditions governing the return of plaintiffs' initial investment. Moreover, Capozzola refused to pay the $20,000 based on the MOU. He first insisted on a "final agreement" before payment—a position at odds with his present claim the MOU was a binding agreement with all essential terms, and an inconsistency he was unable to reconcile when questioned at trial. Capozzola then prepared a memorandum for Hogue to sign which included terms different from the MOU and insisted that memorandum be signed before he provided the $20,000. Neither of those actions by Capozzola is consistent with the MOU being a binding agreement. The parties thereafter acted inconsistently with regard to the MOU's terms on the calculation of the revenue share due plaintiffs. All of this was substantial evidence supporting the trial court's finding the MOU was not a binding contract.

C. The Trial Court Did Not Err in Denying Declaratory Relief

Plaintiffs assert the court wrongly failed to award them declaratory relief. Given our affirmance of the trial court's holding that the MOU was not an enforceable contract, plaintiffs were not entitled to declaratory relief based on the MOU terms. (*SI 59 LLC v. Variel Warner Ventures, LLC* (2018) 29 Cal.App.5th 146, 155.) The court accordingly did not err in entering judgment for defendants on the declaratory relief count.

D. Hogue Could Terminate the Agreement

Capozzola and Carbonel argue the trial court erred in finding Hogue had a unilateral right to terminate the oral contract. In plaintiffs' view, because the parties' agreement did not have an express duration, it continued so long as performance was possible. Put differently, plaintiffs argue they are entitled to continue receiving 15 percent of the gross revenues so long as the race continues to exist. The law is to the contrary, and the trial court did not err in finding Hogue had a right to terminate.

A court's initial effort in construing contracts of continuing performance with no express term of duration "must always be that of implying a term of duration commensurate with the intentions of the parties . . . .” (*Consolidated Theatres, Inc. v. Theatrical Stage Employees Union* (1968) 69 Cal.2d 713, 727.) Here, plaintiffs argue the contract's term is essentially indefinite and therefore infinite—the contract never ends unless the race ends. Indefinitely is not an ascertainable term. Where the nature of the contract and surrounding circumstances suggest no ascertainable term, “the law usually implies that the term of duration shall be at least a reasonable time, and that the obligations under the contract shall be terminable at will by any party upon reasonable notice after such a reasonable time has elapsed.” (*Id*. at pp. 727—728; see also *Varni Bros. Corp. v. Wine World, Inc*. (1995) 35 Cal.App.4th 880, 891; *Zimco Restaurants v. Bartenders Union* (1958) 165 Cal.App.2d 235, 240 [“As to contracts contemplating continuing performance for an indefinite time, the general rule is that such contracts are terminable at will by either party.”].)[5]

The trial court followed this general rule. Having impliedly found the parties had performed under their agreement for a reasonable period of time (five years), and that neither the agreement itself nor the surrounding circumstances suggested an ascertainable term of duration, the court held the agreement was terminable at will upon reasonable notice.

While plaintiffs assert such a termination right cannot be inferred because it would render the contract illusory, the fact one party has the power to terminate a contract “is not fatal to its

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5 While plaintiffs rely on *Warner-Lambert Pharmaceutical Co. v. John J. Reynolds, Inc*. (S.D.N.Y. 1959) 178 F. Supp. 655, nothing in that decision suggests the contract at issue was governed by California law.

enforcement, if the exercise of the power is subject to limitations, such as fairness and reasonable notice." (*Asmus v. Pacific Bell* (2000) 23 Cal.4th 1, 16.) The trial court's implied finding of fairness and reasonable notice is supported by substantial evidence. The parties performed for five years, and plaintiffs were paid over six times ($120,620) their initial investment.[6] The court found notice of termination was not reasonable for purposes of the 2016 race and awarded damages for the 2016 race. Given the nature of the event, notice over a year before the 2017 race was reasonable.

E. The Trial Court Did Not Err in its Damages Award

Plaintiffs raise several overlapping damages arguments. They assert the trial court erred in failing to award them a percentage of the 2017 race revenues. They argue the court erred in rejecting Carbonel's testimony valuing plaintiffs' 15 percent interest in the race using a multiple of future expected revenues. Finally, plaintiffs argue in the alternative their 15 percent interest should be valued using the initial $20,000 payment, and that amount returned to them.

Plaintiffs bore the burden of proof to demonstrate damages. (*Coles v. Glasser* (2016) 2 Cal.App.5th 384, 391.) Where, as here, " 'the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals' " (*Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 465), " 'the question for

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6 The trial court erroneously computed the return as over $140,000, apparently by mistakenly including revenues from the 2017 race in its computation.

a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) "uncontradicted and unimpeached" and (2) "of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding." ' " (*Id*. at p. 466.)

1. Post-2016 Revenues

Because Hogue did not give reasonable notice of termination before the 2016 event, the court found plaintiffs were entitled to 15 percent of the gross revenues from the 2016 race.[7] Hogue's 2016 notice of termination was reasonable, however, for purposes of the 2017 event. Plaintiffs therefore were not entitled to any percentage of revenues for the 2017 race, and the court did not err in declining to award plaintiffs any such percentage.

2. Valuation of Plaintiffs' Fifteen Percent Interest Using Future Race Revenues

Plaintiffs argue the court erred in rejecting Carbonel's testimony valuing their 15 percent interest using a percentage of future race revenues because Hogue did not offer any contrary expert testimony. In support of this claim, plaintiffs quote language from *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 772 (*Sargon*), stating a "court must not weigh an opinion's probative value or substitute its own opinion for the expert's opinion." *Sargon*, however, addresses a

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[7] Capozzola and Carbonel did not generate any sponsorship revenues for the 2016 race, and thus were not entitled to any percentage of such sponsorship revenues.

trial court's duty to act as a " 'gatekeeper' " to exclude speculative expert testimony. (*Id*. at p. 753). Plaintiffs confuse this gatekeeper obligation with the court's role as the factfinder in a bench trial. The trial court did not, acting as a gatekeeper, prevent Carbonel from offering his opinion. Rather, it rejected Carbonel's testimony (once given) as not credible—something as the finder of fact it was entitled to do. "So long as it does not do so arbitrarily, a [fact finder] may entirely reject the testimony of a plaintiff's expert, even where the defendant does not call any opposing expert and the expert testimony is not contradicted." (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 633.)[8]

The court's rejection of Carbonel's testimony was not arbitrary. The court found the testimony unsupported because Carbonel "has not demonstrated the background, training and experience necessary to opine to the value of Defendants' interest in or the total value of the LLC and Race." While Carbonel claimed the race was worth $1.5 million, based on a valuation of ten times annual race revenues, he lacked expertise in valuing a race. Carbonel had no background in event planning or race events—he was a retired real estate broker, developer, and entrepreneur. Carbonel had never owned a race prior to Conquer the Bridge, and he never sold a race. Carbonel's opinion that races like Conquer the Bridge sell for around ten times gross was supported by no analysis, case studies, or other real world examples—he simply asserted it without any support.

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[8] While there is an exception to this rule in cases of professional negligence (*Howard v. Owens Corning*, *supra*, 72 Cal.App.4th at p. 632), that exception is inapplicable to this contract dispute.

Moreover, when cross-examined Carbonel admitted he did not currently think the race was worth ten times its gross revenues, and it would need to generate "in excess of half a million dollars—some millions of dollars—to make it ten times gross." Whether the race would ever generate such future revenues was speculative, as Conquer the Bridge had never generated more than $171,654 in gross revenue. Based on this evidence, the court was well within its discretion to reject Carbonel's testimony and find plaintiffs had not carried their burden of prove the value, if any, of their 15 percent interest.

3. Return of Initial Investment

Plaintiffs argued in the alternative their initial $20,000 investment should have been returned to them as repayment either of that initial amount, or of plaintiffs' purported capital account. The court rejected these theories, and that rejection was based on substantial evidence. It accordingly did not err in entering judgment for defendants on the conversion claim, based on their failure to establish any damage from the alleged conversion of plaintiffs' race interest.

Nothing in the parties' agreement specified the initial $20,000 was to be repaid. Instead, Hogue told Capozzola in July 2011 that the $20,000 was not earmarked for particular purpose and how it was used "is on me [Hogue]," a description Capozzola did not contemporaneously dispute. The court also found it did not make sense to infer such a repayment term when plaintiffs received $120,620 from the 2011—2016 races in return for the initial $20,000.

With regard to plaintiffs' capital account claim, the court found no credible evidence such an account existed. Substantial evidence supports this finding. While the tax forms for Conquer the Bridge LLC showed it had a capital account, the accountant for the race never saw any operating agreement for Conquer the Bridge LLC or any other document regarding that capital account, how it was allocated, or whose funds it contained. Hogue testified what Capozzola and Carbonel "gave me was not a capital contribution." The draft operating agreement for Conquer the Bridge LLC (which was not finalized) lists CC Racing LLC's capital contribution as "$0.00." Nothing in the memo to file Capozzola prepared (or the MOU, for that matter) suggested the $20,000 would be earmarked as a capital contribution.

DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED

WEINGART, J.*

We concur:

JOHNSON, Acting P. J.

BENDIX, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.